



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 22, 1999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gary G. Jacobs
Laredo National Bank
700 San Bernado
Laredo, Texas 78040

RE: MUR 4885
Gary G. Jacobs
Mrs. Gary G. Jacobs

Dear Mr. Jacobs:

On March 16, 1999, the Federal Election Commission found that there is reason to believe you knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). On that same date, the Commission also found that there is reason to believe that Mrs. Gary G. Jacobs violated 2 U.S.C. § 441f. The Factual and Legal Analyses, which formed a basis for the Commission's findings, are attached for your information.

You and Mrs. Jacobs may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Submit Written Answers and Subpoena to Produce Documents must be submitted within 30 days of your receipt of this order and subpoena. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed forms stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Karen White, the staff member assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analyses (2)
Procedures
Designation of Counsel Forms (2)

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 4885

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SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Gary G. Jacobs
Laredo National Bank
700 San Bernado
Laredo, Texas 78040

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

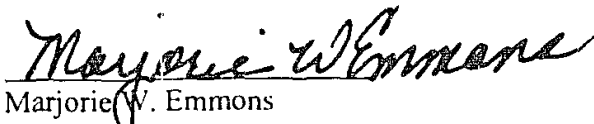
WHEREFORE, the Chairman of the Federal Election Commission has hereunto
set his hand in Washington, D.C. on this 19th, day of March, 1999.

For the Commission,



Scott E. Thomas
Chairman

ATTEST:



Marjorie W. Emmons
Secretary to the Commission

Attachments

Document Request and Interrogatories (5 pages)

March 27, 1998 Correspondence from Haley R. Barbour (1 page)

INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from February 1, 1995 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"LNB" shall mean Laredo National Bank, including all officers, employees, agents or attorneys thereof.

"RNC" shall mean the Republican National Committee, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, calendars, appointment books, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained. For all types of documentary records requested, if any of these records are maintained on any storage format for computerized information (e.g., hard drive, floppy disk, CD-ROM), provide copies of the records as maintained on that format, in addition to the hard copies (i.e., paper copies), and identify the type of storage format produced.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document and the source of all handwritten notations.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the occupation or position of such person at the time of the transactions at issue in this matter, the position description (including duties) of the person at the time of the transactions at issue, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"Describe" with respect to a communication, including all solicitation communications, shall mean state the subject of the communication, the contribution amount solicited and the date, location and duration of the communication. Identify all persons participating in the communication and describe each persons substantive participation in the communication.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

DOCUMENT REQUESTS AND INTERROGATORIES

These Documents Requests and Interrogatories relate to the April 3, 1995 combined \$15,000 contribution made to the Republican National Committee by you and your wife.

A. Concerning the solicitation of the contribution:

1. Describe the circumstances surrounding each separate solicitation for the contribution at issue, including the identity of all persons who made such solicitations, the dates on which all such solicitations were made, and the location where all such solicitations were made. Describe in detail the substantive participation in the solicitations of each identified person.
2. Describe and produce all documents relating to or referencing each solicitation of the contribution, including but not limited to all written solicitations, all minutes or notes taken concerning the solicitations, all internal memoranda concerning the solicitations, and all memoranda of telephone calls and calendar or appointment book entries evidencing each occurrence of a solicitation.

B. Concerning your making of the contribution:

1. Describe any contribution commitment made by you to the RNC. State the amount of the contribution commitment and the date made, and identify all persons to whom the commitment was made.
2. Produce a copy (both sides) of the April 3, 1995 \$15,000 check made out to the RNC.
3. Describe how the contribution was transmitted or forwarded to the RNC (*i.e.*, by mail, by hand) and identify all persons receiving the contribution and all persons to whom the correspondence containing the contribution was addressed. If the contribution was forwarded or transmitted in connection with a fundraising event, state when and where the event was held, state if you attended the event, identify all persons to whom the contribution was given, identify all persons at the event informed of the making of the contribution, and identify all persons at the event who were involved in the solicitation of the contribution at any time.
4. Describe and produce all documents relating to or referencing the contribution, including forwarding, or transmission of, the contribution.

C. Concerning the reimbursement of the contribution:

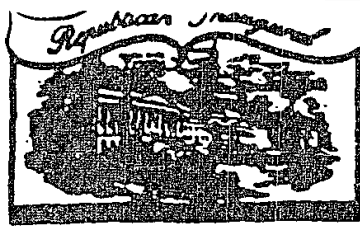
1. Describe the efforts made by you in obtaining a reimbursement from Laredo National Bank of the \$15,000 contribution made to the RNC on April 3, 1995.
2. Identify all persons involved in the request, authorization, approval and/or making of the reimbursement. Describe in detail each identified person's role in the request, approval and making of the reimbursement.
3. Describe and produce all documents relating to or referencing the request, approval, authorization and/or making of the reimbursement.
4. Describe how the reimbursement was made (*i.e.*, by check, by wire transfer), and identify the account (by bank name, name of account holder, and account number) into which the reimbursement funds were deposited.
5. Describe and produce all documents relating to, or referencing, the transfer and deposit of the reimbursement. Separately for each document, identify all persons receiving copies of these documents and the date the document was received.

D. Concerning the March 27, 1998 correspondence from Haley R. Barbour referenced in the accompanying Factual and Legal Analysis and attached to these Document Requests and Interrogatories:

1. Separately for each handwritten notation, identify the person making the notation.
2. Identify each person whose name or initials appear on the document and describe his or her role in the reimbursement.

E. Identify all persons who provided any information or assistance used in the preparation of the responses to these questions and document requests. For each person identified, state for which question or document request the information or assistance was used.

Haley Barbour
Chairman



March 27, 1995

[REDACTED]
Laredo National Bank
700 San Bernardo
Laredo, TX 78040

Dear [REDACTED]

I would like to thank you for your participation and commitment of \$15,000.00 for the February 9 Official 1995 Republican Inaugural Gala. With your help, the success of this event exceeded all expectations.

We are trying to close our financial books on the Gala by March 31, 1995. If you could forward your outstanding pledge to us as soon as possible, it would be greatly appreciated.

Again, I am grateful for your support of the Republican Party. If you have any questions, please give me a call at (202) 863-8700.

Sincerely,

Haley
Haley Barbour

LNB
Spence
r

Per JAMES TREVINO

OK to pay BASED on COMMITMENT

AT BOTTOM OF THIS LETTER.

4/4/95

Republican National Committee • 510 Ford Street, Southwest • Washington, D.C. 20003 • P 202-863-8720 • F 202-863-8634

Printed for the Republican National Committee and the Republican National State Election Committee. Only those contributions which do not fall under the limitations and prohibitions of the Federal Election Campaign Act will be used for the Republican National Committee.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Gary G. Jacobs

MUR: 4885

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). This information suggests that Gary G. Jacobs reimbursed his \$15,000 contribution to the RNC of April 3, 1995, in knowing and willful violation of the Federal Election Campaign Act of 1971, as amended, ("the Act").

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

The Act prohibits a national bank, or any corporation organized by authority of any law of Congress, from making a contribution or expenditure in connection with an election to any political office. *See* 2 U.S.C. § 441b(a). This section also makes it unlawful for an officer or director of a national bank to consent to such a contribution or expenditure by the national bank to any political campaign committee.

The Act further provides that no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution. 2 U.S.C. § 441f. *See also*, 11 C.F.R. §110.4(b). The Act defines the term "person" to include a corporation. 2 U.S.C. § 431(11). Thus, this prohibition applies to a corporation's payment, reimbursement, or

other compensation to any person for his or her contribution to any federal candidate or political committee. *See* Advisory Opinion 1986-41.

Finally, the Act addresses knowing and willful violations. 2 U.S.C. §§ 437g(a)(5)(C), (6)(C), and 437g(d). During the House debates on the Conference Report for the 1976 Amendments, Congressman Hays stated that the phrase "knowing and willful" referred "to actions taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976) (remarks of Congressman Hays). The knowing and willful standard requires knowledge that one is violating the law. *See* FEC v. John A. Dramesi for Congress, 640 F. Supp. 985 (D.N.J. 1986). A knowing and willful violation may be established by "proof that the defendant acted deliberately and with knowledge that the representation was false." U.S. v. Hopkins, 916 F.2d 207, 214-15 (5th Cir. 1990). An inference of a knowing and willful violation may be drawn "from the defendants' elaborate scheme for disguising" their actions and their "deliberate convey[ance of] information they knew to be false to the Federal Election Commission." *Id.*

B. Legal Analysis

Materials within the Commission's possession evidence that on April 3, 1995, Gary G. Jacobs, the Bank's President, made a \$15,000 contribution to the RNC, which was subsequently reimbursed by the Bank. According to the RNC's disclosure reports on file with the Commission, the RNC reported that its federal account had received the contribution on April 17, 1995, as \$7,500 from Gary G. Jacobs and \$7,500 from Mrs. Gary G. Jacobs.

Based on the available materials, the following appear to be the circumstances surrounding the contribution and reimbursement. According to a March 27, 1998, RNC acknowledgment letter sent to Laredo National Bank's address, the Bank's contribution to the

RNC resulted from Mr. Jacobs' "commitment of \$15,000 for the February 9 Official 1995 Republican Inaugural Gala." See Letter from Barbour to Jacobs of 3/27/98. In the acknowledgment letter sent following the event, Haley Barbour, Chairman of the RNC, requests fulfillment of the "outstanding pledge . . . as soon as possible." *Id.* In response, on April 3, 1995, Mr. Jacobs fulfilled his commitment by making a combined \$15,000 contribution in his and his wife's name. The following day, "per Mr. Jacobs instructions [sic]," a disbursement request for "reimbursement of contribution to the 1995 Official Republican Inaugural Gala" was prepared. See LNB Disbursement Request dated 4/4/95. Subsequently, on April 5, 1995, a reimbursement check was apparently sent to Paty Benavides (a Bank employee) and deposited into Mr. Jacobs' account. Almost three years later, on February 24, 1998, Mr. Jacobs repaid \$15,000 to the Bank for the "incorrect reimbursement made by bank . . . on April 4, 1995." See LNB General Ledger Account Journal Entry dated 2/24/98. However, this corrective action was taken by Mr. Jacobs only after being notified of the apparent illegality.

A memorandum accompanying Mr. Jacobs' 1998 repayment to the Bank suggests Respondent's knowledge at the time of the reimbursement of the prohibition on bank contributions. This memorandum explains that the RNC solicited a contribution directly from the Bank. See Memorandum from Jacobs to Saucedo of 2/24/98. Mr. Jacobs assertedly informed the RNC of his belief that a national bank could not contribute, but the RNC "insisted that it was legal" for the Bank to contribute. *Id.* Mr. Jacobs claims that, in response, he agreed to write a personal check for the requested contribution, pending the RNC's "opinion on the legality of LNB's ability" to contribute. *Id.* However, as the available materials evidence, Mr. Jacob's immediately sought reimbursement for his contribution.

Mr. Jacobs' initialing of the handwritten reimbursement request, the clear notation on the official reimbursement documentation that the request was being made "per Mr. Jacobs instructions," and the timing of the reimbursement request, the day immediately after the contribution was made, implicates Mr. Jacobs in all aspects of the transaction, and highlights his active participation in seeking the reimbursement of himself. Moreover, it appears from Mr. Jacobs' own admission that he understood that the Bank was prohibited from contributing directly. Nonetheless, Mr. Jacobs still sought reimbursement from the Bank for his \$15,000 contribution.

Pursuant to 2 U.S.C. § 441b(a), it is unlawful for an officer or director of a national bank to consent to any contribution or expenditure by the national bank to any political committee. Moreover, under 2 U.S.C. § 441f, no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution. Accordingly, there is reason to believe that Gary G. Jacobs knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Mrs. Gary G. Jacobs

MUR: 4885

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). This information suggests that Mrs. Gary G. Jacobs allowed the Laredo National Bank to use her name to make a prohibited \$7,500 contribution to the RNC on April 3, 1995, in violation of the Federal Election Campaign Act of 1971, as amended, ("the Act").

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

The Act prohibits a national bank, or any corporation organized by authority of any law of Congress, from making a contribution or expenditure in connection with an election to any political office. *See* 2 U.S.C. § 441b(a). This section also makes it unlawful for an officer or director of a national bank to consent to such a contribution or expenditure by the national bank to any political campaign committee.

The Act further provides that no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution. 2 U.S.C. § 441f. *See also*, 11 C.F.R. §110.4(b). The Act defines the term "person" to include a corporation. 2 U.S.C. § 431(11). Thus, this prohibition applies to a corporation's payment, reimbursement, or

other compensation to any person for his or her contribution to any federal candidate or political committee. See Advisory Opinion 1986-41.

B. Legal Analysis

Materials within the Commission's possession evidence that on April 3, 1995, Gary G. Jacobs, the Bank's President, made a \$15,000 contribution to the RNC, which was subsequently reimbursed by the Bank. According to the RNC's disclosure reports on file with the Commission, the RNC reported that its federal account had received the contribution on April 17, 1995, as \$7,500 from Gary G. Jacobs and \$7,500 from Mrs. Gary G. Jacobs.

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April 4, 1995." See LNB General Ledger Account Journal Entry dated 2/24/98. However, this corrective action was taken by Mr. Jacobs only after being notified of the apparent illegality.

Pursuant to 2 U.S.C. § 441f, no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution. Accordingly, there is reason to believe that Mrs. Gary G. Jacobs violated 2 U.S.C. § 441f.